

**Response to Comments**  
**Draft NPDES Permit No. ID-002023-1**  
**City of McCall, Idaho**

**Background:** On March 18, 1999, EPA issued a notice of proposed modification of a National Pollutant Discharge Elimination System (NPDES) permit for the City of McCall, Idaho. The facility is an activated sludge wastewater treatment plant. The water is discharged to the North Fork Payette River at approximate river mile 73. The public review and comment period expired on April 19, 1999.

Comments regarding the proposed permit for the McCall facility were received from the U.S. Fish & Wildlife Service (USF&WS), from the Idaho Division of Environmental Quality (IDEQ), and from Wayne VanCour, a citizen of McCall. The following summarizes and responds to each comment raised by these commentors.

**USF&WS**

Comment: EPA has made a determination, consistent with Section 7 of the Endangered Species Act, that the proposed permit modification will have no adverse impact on any endangered or threatened species. On March 22, 1999, EPA requested written concurrence from USF&WS with this determination. On March 29, 1999, USF&WS provided written concurrence on the EPA determination.

Response: Noted; no further action required by EPA.

**IDEQ**

Comment: IDEQ requested the date for completion of the winter storage cell be changed to October 1, 1999.

Response: This change has been made in the final permit.

**WAYNE VANCOUR**

Comment: Page 8, Paragraph 6 entitled *Force Majeure Clause* is not clear at all on whose force majeure clause this document intends to enforce when the permit holder fails to meet the dates of compliance. The sentence, “The Force Majeure Clause gives the state the authority to extend a dead line for performance in the case of force majeure events.” The Force Majeure in the state Consent Order has no date certain but says an extension of time shall be granted. This needs to be clarified so there is no misunderstanding about who has the authority for the dates and the enforcement of the date.

The Force Majeure Clause in the state Consent Order only deals with the event that McCall

doesn't get the funds for the second cell. The city of McCall has gotten funding for both the first and second cells so this should not be the issue. The real issue is that the city of McCall is spending so much money on lawyers, engineering and land purchase that there will not be enough for a second cell and the first cell will be smaller than needed so the city of McCall probably will be in violation of the compliance dates and will want to invoke the Force Majeure Clause based on the fact that they cannot incur debt. This is why as I stated above there needs to be clear definition of who is the authority when this occurs.

Response: EPA believes it is clear that only EPA may modify deadlines in the compliance schedule, and then only to the extent allowed by the NPDES regulations. Paragraph 6 of the Fact Sheet dealing with the Force Majeure clause in the state's Consent Order explains that EPA has not included the Force Majeure clause in the draft permit because the clause would give the state authority to extend deadlines in a federal permit. The NPDES regulations do not allow for this. Further, exceptions from compliance allowed by the Force Majeure clause are not allowable reasons for noncompliance as outlined in the NPDES regulations. EPA is the only agency with authority to modify the deadlines in the permit.